IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 7281 of 2007(P)

PETITIONER:

N.M. MANI (RETD. L.D.CLERK,
OFFICE OF THE SUB REGISTRAR, ETTUMANOOR),
NEERPARAMALAYIL, VARICKAMKUNNU, VADAKARA P.O.,
THALAYOLAPARAMBA.

BY ADV. SMT.P.V.ASHA

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF TAXES, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. INSPECTOR GENERAL OF REGISTRATION,
THIRUVANANTHAPURAM.

3. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF VIGILANCE, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. P. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.7281 of 2007-P

JUDGMENT

The petitioner retired from service as Lower Division Clerk on 31.12.2002. He was suspended from service by Ext.P1 order dated 30.10.2001 along with 9 other employees. Later, the suspension was withdrawn as per Ext.P2 order dated 24.10.2002 without prejudice to the disciplinary proceedings. Soon thereafter, in December he retired from service. A memo of charges was issued to him as per Ext.P3 dated 1.2.2003, after his retirement. The said proceeding was closed, requiring the petitioner to be more vigilant in future. Since the period of his suspension was not regularised, so far, the pension payable to the petitioner has not been released. So, he filed Ext.P5 representation. While so, he has been served with Ext.P6 order of the Government dated 3.10.2006, ordering to reopen the disciplinary proceedings against him. This writ petition is filed, challenging Ext.P6 and also seeking a direction to the respondents to regularise the period of his suspension and settle his claim for terminal benefits.

2. Ext.P6 is not sustainable for more than one reason. Firstly, it

was passed without hearing the petitioner. Secondly, the disciplinary proceedings to impose a major penalty cannot be reopened or continued after the retirement of the petitioner. Therefore, Ext.P6 is quashed. The period of suspension of the petitioner from 3.11.2001 to 7.11.2002 shall be regularised in accordance with law by the 1st respondent within two months from the date of receipt of a copy of this judgment. The pensionary claims of the petitioner shall be settled and all amounts due to him shall be released within two months thereafter.

3. The learned Government Pleader submits, the respondents may have powers to continue the disciplinary proceedings for the purpose of deciding whether the petitioner's service was satisfactory and therefore, he is entitled to get full pension. The learned counsel for the petitioner points out that since the time limit for initiating such proceedings is already over, the same is legally not permissible. Since the said issue is a hypothetical issue, the same need not be decided in this writ petition. So,

the contentions of both sides are kept open.

The Writ Petition is disposed of as above

K. BALAKRISHNAN NAIR,
JUDGE.

27th July, 2007.
nm.